

FINDINGS OF FACT:

The claimant started working for the employer on May 11, 2004. The claimant worked full time as a pizza maker. The employer's policy states in part that if an employee fails to report to work or contact the employer to report he is unable to work two consecutive days, the employer considers the claimant to have voluntarily quit employment.

On August 2, the claimant informed the employer he was unable to work as scheduled. The claimant reported that he did not feel well and thought his liver and kidneys were failing him. Since the claimant had not gone to a doctor and was not restricted from working, the employer told him to report to work as scheduled. The claimant reported to work on August 2 and worked as scheduled. The claimant also reported to work on August 3. On August 3, the claimant collapsed at work. A co-worker took the claimant to the hospital, after first picking up the claimant's girlfriend. An emergency room doctor diagnosed the claimant as being dehydrated. The claimant's physician gave the claimant a work restriction indicating he could not work August 4 through 8.

The employer did not receive any call from the claimant or anyone on his behalf until August 6, Saturday night. By the time the claimant called the employer, he had missed two scheduled shifts. As a result of missing two shifts without notification, the employer considered the claimant to have voluntarily quit his employment. The employer informed the claimant the employer no longer considered him an employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa §96.5-2-a. The claimant did not quit his employment. Instead the employer discharged him on August 6 after he failed to report to work for two scheduled shifts.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The facts do not establish that the claimant committed work-connected misconduct. The employer knew a

co-worker took the claimant from work to the emergency room on August 4. While the claimant asserted his girlfriend called the employer from the hospital, the claimant's girlfriend did not testify and the employer testified that neither the claimant nor anyone on his behalf contacted the employer before Saturday night. Even though the employer may not have been contacted, the employer knew the claimant had been taken to the emergency room. Also, on August 2, the claimant told the employer he was ill and unable to work. Given the fact the employer told the claimant to report to work on August 2 after the claimant reported he was ill and unable to work, it is understandable that the employer discharged the claimant when he did not report to work for two scheduled shifts. When the claimant learned he was discharged on August 6, there was no need for him to provide his doctor's statement indicating he was restricted from working until August 8, 2005.

The claimant made an error in judgment when he failed to contact the employer before August 6 at 9:30 p.m. Since the claimant was ill and restricted from working, the facts do not establish the claimant intentionally disregarded the employer's interest. In this case, the employer knew the claimant was ill and unable to work because an employee took the claimant to the emergency room on August 4. The claimant did not commit work-connected misconduct. As of August 7, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 26, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 7, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw